MOTION FILED
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No. 88-1447

IN THE

# Supreme Court of the United States

OCTOBER TERM 1988

WARD PETROLEUM CORPORATION, ET AL.,
*Petitioners,*

*v.*

THE LOUISIANA LAND AND EXPLORATION COMPANY, ET AL.,
*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT**

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF SUPPORTING PETITIONERS**
**AND**
***AMICUS CURIAE* BRIEF OF THE NATIONAL ASSOCIATION OF ROYALTY OWNERS AND THE GARFIELD COUNTY MINERAL OWNERS ASSOCIATION**

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## MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF SUPPORTING PETITIONERS

*Amici Curiae*, the National Association of Royalty Owners and the Garfield County Mineral Owners Association, are independent associations of mineral, surface, and royalty owners. This Motion is filed because consent to *amicus* status was refused by Respondent The Louisiana Land and Exploration Company.

*Amicus Curiae* party the National Association of Royalty Owners (NARO) represents mineral, surface, and royalty owners located in all fifty states. In Oklahoma, NARO is affiliated with 27 different county royalty associations. NARO represents nearly 5000 individual members and 38,500 affiliates. NARO is the only national

organization in the United States devoted totally to the royalty (producing sub-surface interests) and mineral owner (non-producing sub-surface interests).

*Amicus Curiae* party the Garfield County Mineral Owners Association represents the interest of a group of surface, mineral, and royalty owners located primarily in Garfield County, Oklahoma.

The specific issue before the Court in this case involves many parties and many different mineral interests. Petitioners have demonstrated for the Court the significance of these interests, and the number of persons affected by the immediate decision of the Oklahoma Supreme Court. However, the facts not presented by the petition for certiorari in this case involve the number of mineral and royalty owners affected by the precedent established by the Oklahoma Supreme Court. The error in this case is not only capable of repetition, but is bound to be repeated unless corrected by this Court.

As the brief filed by *amici curiae* associations will demonstrate, a great number of Oklahoma mineral and royalty owners have a stake in the outcome of this case. Those individual owners are the holders of certain vested property rights in well-bore scope pooling orders that were unappealed and final before the Oklahoma Supreme Court decided in *Amoco Production Co. v. Corporation Commission*, 751 P.2d 203 (Okla. 1988), that the Oklahoma Corporation Commission had no power to pool by the well bore. In spite of the *Amoco* decision, the rights which had vested under pre-existing final orders of the Oklahoma Corporation Commission must not be dis-

turbed by subsequent, collateral action by the Oklahoma Supreme Court.

Because a decision by the Court in this case will affect more than the actual parties to this case, and will serve to protect the rights of numerous other similarly situated mineral and royalty interest owners, the Court should grant leave to *amici curiae* associations to file an *Amicus Curiae* Brief to demonstrate these wide ranges of interest.

Respectfully submitted,

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## *AMICUS CURIAE* BRIEF OF THE NATIONAL ASSOCIATION OF ROYALTY OWNERS AND THE GARFIELD COUNTY MINERAL OWNERS ASSOCIATION

## QUESTIONS PRESENTED

(same as in certiorari petition)

I. Did the Oklahoma Supreme Court unlawfully take Petitioners' property, or deprive them of their property, contrary to the Fifth and Fourteenth Amendments of the United States Constitition, when that court rendered Petitioners' mineral leaseholds totally worthless by rewriting an earlier-issued final order, even though the order when issued recognized and validated Petitioners' leasehold interests and even though Petitioners relied on the clear intent and plain language of that order in making a multi-million-dollar investment decision?

II. Were Petitioners deprived of their right to procedural due process when the Oklahoma Supreme Court declared post-hoc that Petitioners' election not to participate under a "forced pooling order" extinguished Petitioners' mineral leasehold interests, even though the State had notified Petitioners before their election that the opt-out election would *not* extinguish Petitioners' leasehold rights?

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## *AMICUS CURIAE* BRIEF OF THE NATIONAL ASSOCIATION OF ROYALTY OWNERS AND THE GARFIELD COUNTY MINERAL OWNERS ASSOCIATION

## INTEREST OF *AMICI CURIAE*

*Amici curiae*, the National Association of Royalty Owners (NARO) and the Garfield County Mineral Owners Association represent the interest of many mineral, surface, and royalty owners in Oklahoma. A more lengthy discussion of the interest of *amici curiae* is contained *supra* in the Motion for Leave to File *Amici Curiae* Brief, bound under this same cover. The statement of the interest of the *amici curiae* in the Motion is incorporated in this brief for purposes of S. Ct. R. 36.5.

## SUMMARY OF ARGUMENT

*Amici curiae* mineral and royalty owners associations support Petitioners' request for certiorari. This Court should grant certiorari for two simple reasons. First, the Oklahoma Supreme Court stepped over constitutional boundaries by disregarding vested property interests in a final judgment. Once a judgment becomes final, even if it is based on an incorrect interpretation of the law, the parties receive constitutionally protected interests in that judgment. Second, the importance of this issue is not limited to the (admittedly numerous) Petitioners in this case. Instead, there is a great potential for repetition of the exact constitutional violation which has occurred in this case. To prevent the unnecessary repetition of the Oklahoma Supreme Court's error, this Court should grant certiorari and affirm the constitutional sanctity of a final judgment.

## ARGUMENT AND AUTHORITY

*Amici curiae* have, in the past, urged the Oklahoma Corporation Commission to maintain a pooling policy whereby the Commission retains the discretion to either pool by the well bore or by the unit. *Amici curiae* believe that this is the wisest policy because of the varied geological and reservoir characteristics found within the State of Oklahoma. No two drilling and spacing units are geologically identical. Some wells are drilled for crude oil; others are drilled for natural gas. Some wells produce both gas and oil. Some geological prospects are heavily faulted, and have separate reservoirs; others are not. Some hydrocarbons occur at relatively shallow depths; others do not.

Some reservoirs have high porosity and permeability; others do not.

The facts and circumstances surrounding the creation of the unit, and the factors affecting the decision whether to participate in the unit, vary widely according to the geological and reservoir characteristics of the proposed unit.

The position urged by *amici curiae* was effectively rejected by the Oklahoma Supreme Court in *Amoco Production Co. v. Corporation Commission*, 751 P.2d 203 (Okla. 1988), where the court determined that pooling could only be done by the unit. The court did, however, announce that that rule would apply prospectively only, and would not affect any well-bore order that was final prior to the court's decision. *Id.* at 208.

In this case, the Oklahoma Supreme Court has ignored its own ruling that *Amoco* is to be accorded prospective effect only. The first order in this case was unquestionably of well-bore scope. This order was never appealed, and became final, prior to the *Amoco* decision. When a second additional well was drilled in the unit involved in this case, an additional pooling order was sought (because the first pooling order covered only one well). The Oklahoma Corporation Commission ruled that the second order should be well bore in scope, just like the first pooling order covering the unit. The second order *was* appealed, and the supreme court considered it *after* having decided *Amoco*. Because it was on direct appeal, the second order was properly subject to the *Amoco* rule. It is im-

portant that Petitioners have never disputed the fact that the second order is subject to *Amoco*. Instead, Petitioners have sought to protect their vested rights obtained under the first order, which was final, which was well bore in scope, which was not appealed, and which was not subject to the *Amoco* rule.

The facts of this case are not at all unique. Many well-bore scope orders became final prior to *Amoco*. From May 3, 1984, until January 1987, the announced policy of the Oklahoma Corporation Commission was to pool *exclusively by the well bore.* Prior to that, the Commission pooled both by the well bore and by the unit. The Commission has been faced with a large volume of controversies concerning interpretations of these pre-*Amoco* pooling orders. Because of previous Commission policy, many of those orders have been construed by the Commission to be well-bore scope. *See, e.g.,* Application of Helmrich and Payne, Inc., C.D. 141993, Order 328779 (Aug. 1, 1988) (recognizing that rights vested by elections under pre-*Amoco* well-bore orders should not be disturbed); Application of Wagner & Brown, C.D. 143485, Initial Report of Hearing Officer (Jan. 6, 1989) (same). If these actions, or if any of the numerous other similar actions pending before the Commission are appealed to the Oklahoma Supreme Court, the potential exists for the mistake committed by the Oklahoma Supreme Court in this case to be repeated.

*Amici curiae,* despite the decision of the Oklahoma Supreme Court, are nonetheless firmly convinced the Oklahoma pooling statute should allow pooling both by

the well bore and by the unit, depending on the circumstances.[1] However, regardless of how the Oklahoma Supreme Court decided *Amoco*, an even more important concept is at stake in this case. That concept is when a judgment is final, and when the judgment has been entered according to certain standards, the judgment should not be summarily vacated and reversed by a subsequent collateral attack. This Court itself has recognized as a general principle of law that stare decisis should be closely followed when dealing with property rights.

> For that doctrine [stare decisis] not only plays an important role in orderly adjudication; it also serves the broader societal interest in even-handed, consistent, and predictable application of legal rules. When rights have been created or modified in reliance on established rules of law, the arguments against their change have special force.

*Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 272

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[1] In fact, *amici curiae* view the *Amoco* decision as giving an unconstitutional construction to the pooling statute. If the pooling statute is construed as to mandate unit-wide pooling and never allow well-bore pooling, the statute becomes a legislative act so irrational as to violate due process. The justification for forced pooling is the prevention of waste and the protection of correlative rights. However, these two goals cannot be achieved without giving careful consideration to the specific geological facts involved in any particular drilling unit. In some instances, pooling by the well bore may be justified. In other instances, pooling the entire unit may be justified. The only reasonable and necessary interpretation of the pooling statute is allowing discretion to do either.

(1980) (Stevens, J., joined by Brennan, Stewart, and Blackmun, J.J.).

This case involves far more than the doctrine of stare decisis. This case involves far more than a mere refusal by a state court to adhere to its announced decisions. This case involves an even more fundamental concept. A final judgment is a property interest that cannot be disturbed without due process and cannot be taken without just compensation. Under Oklahoma law, a final judgment is a vested right. *See Timmons v. Royal Globe Ins. Co.*, 713 P.2d 589, 594 (Okla. 1985) ("No term of a judgment may be affected by after-enacted legislation. To hold otherwise would undermine the constitutionally-shielded concept of an 'accrued' or 'vested' right in the adjudicated obligation.") This Court has frequently cautioned that when legislation or a judicial decree is given retroactive application, an implicit limitation is that vested or accrued rights must be respected. *See, e.g., Pension Benefit Guaranty Corp. v. R. A. Gray & Co.*, 467 U.S. 717, 730 (1984); *Linkletter v. Walker,* 381 U.S. 618, 627 (1965) (the effect of the subsequent ruling of invalidity of a statute on a prior final judgment [rendered under the statute] when that prior judgment is collaterally attacked depends upon a consideration of rights claimed to have become vested); *Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 364 (1932).

As Oklahoma law now stands, the Corporation Commission incorrectly interpreted the Oklahoma pooling statute by allowing pooling by the well bore. However, before the Oklahoma Supreme Court so ruled, the Cor-

poration Commission entered hundreds, perhaps thousands, of well-bore pooling orders. Many of these orders were unappealed and became final before the *Amoco* decision—a decision prospective in scope only. When those pooling orders became final, the parties received property interests in the final judgments represented by the well-bore scope pooling orders. To allow the Oklahoma Supreme Court to collaterally attack those final judgments, as was done in this case, is to deprive parties of their property interests without due process, and without just compensation.

This Court has never tolerated retrospective adjustment of liabilities established by a final judgment.

> And in either case, where the right has attached in the courts of the United States, a State has no power, by legislation or otherwise, to modify or impair it. Retrospective laws of a remedial character may be passed; but no legislative act can change the rights and liabilities of the parties which have been established by a solemn judgment.

*Massingill v. Downs,* 48 U.S. (7 How.) 760, 768 (1849). If the first order needed any interpretation by the Oklahoma Supreme Court, it was supplied by the announced prospective application of *Amoco*. This final order can not now be singled out and treated differently from all the other pre-*Amoco* well-bore pooling orders.

Due process requires that once a judgment is final, it not be disturbed. It matters not whether it is the legislature or the judiciary that attempts to disturb that vested right.

This Court should take this opportunity to grant certiorari in this case, and confirm this vital principle. Such a holding transcends the narrow confines of this case, and will aid the thousands of parties in Oklahoma affected by final well-bore scope pooling orders.

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